

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

JASON LOUIS TINKLENBERG,

Defendant.

Case No. 1:05-cr-239-01

Hon. Richard Alan Enslen

ORDER

Now before the Court are Defendant Jason Louis Tinklenberg's Motion to Vacate his Sentence, Motion for Funding for an Independent Laboratory Expert and Motion to Dismiss because of Insufficient Evidence.

In regards to Defendant's Motion to Vacate his Sentence, such a Motion is premature. "In the absence of extraordinary circumstances, a district court is precluded from considering a 28 U.S.C. § 2255 application for relief during the pendency of the applicant's direct appeal. An application under 28 U.S.C. § 2255 is an extraordinary remedy and should not be considered a substitute for direct appeal. Moreover, determination of the direct appeal may render collateral attack by way of 28 U.S.C. § 2255 application unnecessary." *Capaldi v. Pontesso*, 135 F.3d 1122, 1123 (6th Cir. 1998).

In regards to both the Motion for Funding for an Independent Laboratory Expert and Motion to Dismiss, the Court lacks jurisdiction to entertain these Motions at this time. Defendant filed a Notice of Appeal on December 13, 2006, and both of these Motions were filed during the pendency of the Appeal. "As a general rule, the district court loses jurisdiction over an action once a party files a notice of appeal, and jurisdiction transfers to the appellate court." *Lewis v. Alexander*, 987 F.2d

392, 393-94 (6th Cir. 1993). As such, this Court has lost jurisdiction over this action and therefore, does not have proper jurisdiction.

ACCORDINGLY, IT IS HEREBY ORDERED that Defendant Jason Louis Tinklenberg's Motion to Vacate his Sentence (Dkt. No. 145), Motion for Funding (Dkt. No. 146) and Motion to Dismiss (Dkt. No. 147) are **DENIED WITHOUT PREJUDICE**.

DATED in Kalamazoo, MI:
January 22, 2007

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE